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Legal Protection for the Weaker Party in Standard Form Contracts Based on Balance in Indonesian Civil Law

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Abstrak (Indonesia)	*Penelitian ini menganalisis perlindungan hukum terhadap pihak lemah dalam kontrak baku berdasarkan prinsip keseimbangan dalam hukum perdata Indonesia. Permasalahan utama muncul karena kontrak baku disusun secara sepihak oleh pelaku usaha sehingga kesepakatan yang terjadi bersifat formal dan tidak mencerminkan posisi tawar yang setara. Penelitian ini bertujuan mengkaji kedudukan kontrak baku, mengidentifikasi bentuk ketidakseimbangan klausula, serta merumuskan mekanisme penyelesaian sengketa berbasis prinsip keseimbangan. Metode yang digunakan adalah penelitian hukum normatif dengan pendekatan perundang-undangan, konseptual, dan kasus melalui studi kepustakaan terhadap peraturan, doktrin, dan praktik peradilan. Hasil penelitian menunjukkan bahwa kontrak baku tetap sah sebagai perjanjian, namun kekuatan mengikatnya tidak absolut karena tunduk pada asas itikad baik dan kepatutan. Ketidakseimbangan tampak melalui klausula eksonerasi, perubahan sepihak, pembatasan upaya hukum, pengalihan tanggung jawab, serta redaksi yang tidak transparan. Penyelesaian sengketa tidak dilakukan melalui pembatalan total, tetapi melalui penafsiran korektif, pengesampingan klausula tidak adil, dan penyesuaian kewajiban para pihak. Penelitian ini menegaskan bahwa prinsip keseimbangan berfungsi sebagai koreksi terhadap kebebasan berkontrak sehingga kontrak tidak hanya menjamin kepastian hukum tetapi juga menghadirkan keadilan substantif bagi pihak yang lebih lemah dalam hubungan kontraktual modern.*
Abstrack	*This study analyzes legal protection for weaker parties in standard form contracts based on the principle of balance in Indonesian civil law. The main issue arises because standard contracts are drafted unilaterally by business actors, so the resulting consent is merely formal and does not reflect equal bargaining positions. This research aims to examine the legal status of standard contracts, identify forms of imbalance in contractual clauses, and formulate dispute resolution mechanisms based on the principle of balance. The method used is normative legal research employing statutory, conceptual, and case approaches through library research of legislation, doctrine, and judicial practice. The results show that standard contracts remain valid agreements, but their binding force is not absolute because they are subject to the principles of good faith and propriety. Imbalance appears through exoneration clauses, unilateral modification, limitation of legal remedies, transfer of liability, and non-transparent drafting. Dispute resolution is not carried out through total annulment but through corrective interpretation, exclusion of unfair clauses, and*

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adjustment of the parties' obligations. This study confirms that the principle of balance functions as a corrective to freedom of contract so that contracts not only ensure legal certainty but also deliver substantive justice to weaker parties in modern contractual relationships.

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I. INTRODUCTION

The development of the modern economy has brought fundamental changes to the practice of civil legal relations, particularly in the formation of contracts. In the classical era, a contract was understood as the result of a meeting of free wills between parties in equal positions[1]. Civil law placed contracts as a manifestation of individual autonomy arising from a rational negotiation process. However, in contemporary practice, the structure of legal relations has shifted. An increasingly complex business world demands efficiency, speed, and standardization. From this need emerged the standard form contract, namely an agreement drafted unilaterally by a business actor and offered to another party without room for negotiation. The accepting party only has the choice to agree or refuse, without any opportunity to modify the contents of the agreement[2].

The phenomenon of standard contracts is highly dominant in modern transactions, ranging from banking, insurance, consumer financing, transportation services, to digital platforms[3]. On the one hand, standard contracts provide economic efficiency because they reduce transaction costs and accelerate services. On the other hand, they raise serious issues of contractual justice. When one party determines the entire content of the agreement, the legal relationship is no longer based on balanced bargaining power. The resulting consent becomes formal rather than substantive[4].

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1 Base Gabrila Christy MumekFish, "Perlindungan Dan Upaya Hukum Dalam Menekan Maraknya Perkawinan Anak Di Indonesia," *Lex Et Societatis* 8, no. 1 (2020): 33–40.

2 Fatma Muthia Kinanti, Garuda Wiko, and Erlies Septiana Nurbani, "Interaction Between the Protection of the Rights of Indigenous Peoples and Foreign Investment: Regulation in Indonesia," *Padjadjaran Journal of International Law* 7, no. 2 (2023): 150, https://doi.org/10.23920/pjil.v7i2.1351.

3 Ivana Laura Paparang, "Perlindungan Hukum Terhadap Investor/Nasabah Yang Mengalami Kerugian Dalam Transaksi Trading Forex," *Litigasi* 21, no. 2 (2020): hlm 149, https://doi.org/10.23969/litigasi.v21i2.3101.

4 Desy Ary Setyawati, Dahlan Ali, and M. Nur Rasyid, "Perlindungan Bagi Hak Konsumen Dan Tanggung Jawab Pelaku Usaha Dalam Perjanjian Transaksi Elektronik," *Syiah Kuala Law Journal* 1, no. 3 (2017): 46–64, https://doi.org/10.24815/sklj.v1i3.9638.

Indonesian civil law, which still derives from the *Burgerlijk Wetboek*, places the principle of freedom of contract as its primary doctrine[5]. This principle teaches that every person is free to decide whether to enter into a contract, with whom, and concerning what matters[6]. Consequently, the law respects the agreement of the parties as binding as law upon those who make it. However, this principle was born in a nineteenth-century social context assuming that every individual possessed rational capacity and relatively equal economic standing. In a modern society marked by economic and informational inequality, this assumption is no longer entirely relevant.

Standard contracts demonstrate that freedom of contract may transform into unilateral freedom[7]. The party possessing economic power determines the content of the agreement, while the other party merely accepts its consequences. Many clauses systematically limit the liability of business actors, expand consumer obligations, and even eliminate certain legal rights. Limitation of liability clauses, transfer of risk, unilateral modification, and restriction of legal remedies are frequently found in standard agreements. This condition creates inequality of bargaining power that potentially leads to injustice[8].

The general issue that arises is how Indonesian civil law provides protection to weaker parties in such unbalanced contractual situations. Formally, the agreement remains valid because it fulfills the element of consent. Yet the consent occurs within a structurally unequal condition[9]. If the law adheres solely to the concept of formal consent, it effectively legitimizes injustice. Therefore, there is a need to reinterpret the principle of freedom of contract so that it aligns with substantive justice[10].

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5 Gumanti Retna, "Syarat Sahnya Perjanjian (Ditinjau Dari KUHPerdata) Retna Gumanti Abstrak," *Jurnal Pelangi Ilmu* 5, no. 1 (2020): hlm 7.

6 Setyawati, Ali, and Rasyid, "Perlindungan Bagi Hak Konsumen Dan Tanggung Jawab Pelaku Usaha Dalam Perjanjian Transaksi Elektronik."

7 Desak Made Setyarini, Ni Luh Mahendrawati, and Desak Gde Dwi Arini, "Pertanggungjawaban Direksi Perseroan Terbatas Yang Melakukan Perbuatan Melawan Hukum," *Jurnal Analogi Hukum* 2, no. 1 (2020): 12–16, https://doi.org/10.22225/ah.2.1.1608.12-16.

8 Siti Mujiatun, "Jual Beli Dalam Perspektif Islam : Salam Dan Istisna'," *Jurnal Riset Akuntansi Dan Bisnis* 13, no. September (2013): 202–16.

9 Setyarini, Mahendrawati, and Arini, "Pertanggungjawaban Direksi Perseroan Terbatas Yang Melakukan Perbuatan Melawan Hukum."

10 Kairat Moldashev, Birzhan Sahimbekov, and Sanat Kozhakhmet, "Social Sciences & Humanities Open The Institutional Logics of Research Commercialisation : Reform , Misalignment , and Hybridisation," *Social Sciences & Humanities Open* 12, no. December 2024 (2025): 102000, https://doi.org/10.1016/j.ssaho.2025.102000.

Specific problems then appear in several forms. First, the position of standard contracts within the civil law system lacks comprehensive regulation and is often assessed merely based on the validity of consent[11]. Second, many contractual clauses clearly create imbalance of rights and obligations but are difficult to invalidate because they do not explicitly violate the legal requirements of a valid contract[12]. Third, the application of the principle of balance as a corrective principle has not yet developed a clear doctrinal construction in judicial practice. Fourth, there is no consistent juridical formulation concerning the authority of judges to adjust or annul unfair clauses[13].

Several previous studies have discussed consumer protection against standard clauses. Most research focuses on consumer protection legislation that prohibits certain clauses. Other research emphasizes the principle of good faith as a basis for limiting freedom of contract[14]. Comparative studies also show that many countries have developed the doctrine of unfair contract terms to protect weaker parties. However, these approaches are generally sectoral and do not address the theoretical construction of civil law comprehensively[15].

The limitation of previous research lies in the tendency to view standard contracts merely as consumer issues rather than as fundamental problems in contract theory. As a result, legal protection is understood as an exception to freedom of contract, not as an inherent part of contractual principles themselves[16]. Moreover, prior research has rarely examined the principle of balance as a foundational principle capable of reinterpreting freedom of contract.

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11 F Yuniyanti, S. S., & Siska, "Enhancing Legal Certainty for Consumers in Apartment Unit Trade: A Comparative Analysis of Dispute Settlement Agreements in Indonesia and the Netherlands," *Journal of Law and Legal Reform* 5, no. 1 (2024): 333, http://scioteca.caf.com/bitstream/handle/123456789/1091/RED2017-Eng-8ene.pdf?sequence=12&isAllowed=y%0Ahttp://dx.doi.org/10.1016/j.regsciurbeco.2008.06.005%0Ahttps://www.researchgate.net/publication/305320484_SISTEM_PEMBETUNGAN_TERPUSAT_STRATEGI_MELESTARI.

12 Tsaiyu Chang et al., "Impact of Specialized Rice Production and Marketing Zoning Policy on Farmland Use in Taiwan," *Paddy and Water Environment* 22, no. 2 (2024): 209–22, https://doi.org/10.1007/s10333-023-00962-6.

13 Brendan Humphreys and Senior Researcher, "The Nordic Carceral System : Examining Scandinavian Penal Exceptionalism" 2, no. 1 (2023): 77.

14 Article History et al., "Analisis Yuridis Kekuatan Pembuktian Perjanjian Lisan Dalam Penyelesaian Sengketa Wanprestasi Berdasarkan Putusan Pengadilan No : 44/Pdt.G/2025/PN.YYK," *JUSTNESS Jurnal Hukum Politik Dan Agama* 5, no. 02 (2025): 1–17.

15 Massimo Bartoletti et al., "Dissecting Ponzi Schemes on Ethereum: Identification, Analysis, and Impact," *Future Generation Computer Systems* 102, no. 1 (2020): 259.

16 Evan Hamzah Muchtar, "Muamalah Terlarang: Maysir Dan Gharar," *Jurnal Asy-Syukriyyah* 18 (2017): 82–100.

Judicial practice likewise lacks consistent conceptual parameters in assessing contractual fairness[17].

Here lies the research gap. An analysis is required that positions the protection of weaker parties not merely as social policy but as a logical consequence of the structure of modern contract law[18]. In other words, contract law should not be based solely on formal consent but must reflect a balance of rights and obligations. Without balance, contracts lose their moral legitimacy as instruments of justice.

This research aims to analyze the position of standard contracts within the Indonesian civil law system, identify forms of imbalance in standard clauses, and formulate the principle of balance as the legal foundation for protecting weaker parties. The research also seeks to construct a juridical framework enabling judges to correct unfair clauses in order to achieve substantive justice.[19]

Theoretically, this research is expected to enrich Indonesian civil law doctrine by developing the paradigm that freedom of contract must be understood together with the principle of balance. Contract law is no longer viewed merely as a means of legalizing individual will, but as a mechanism for distributing justice in private relations. Practically, this research provides interpretative guidance for judges in assessing contractual fairness, offers more effective protection for weaker parties, and serves as a reference for the reform of national contract law[20].

The novelty of this research lies in its conceptual approach positioning the principle of balance as a fundamental principle of contract law rather than merely an additional one. Protection of weaker parties is no longer understood solely as public law intervention through consumer protection legislation, but as an inherent part of civil law itself. Accordingly, unfair standard clauses do not merely violate sectoral regulations but contradict the basic structure of contract law.

This approach shifts the paradigm from consent-based contracts toward justice-based contracts. Freedom of contract remains recognized but is limited

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17 Siti Nurbaiti, "Indonesia Passenger's Right Compensation for Transport Accidents: Is It Fulfilling a Sense of Justice?," *Hasanuddin Law Review* 10, no. 2 (2024): 228, https://doi.org/10.20956/halrev.v10i2.5447.

18 t H E Role Et Al., "The Role Of Arbitration Institutions In The Settlement Of Business," *JArbI: Jurnal Arbitrase Indonesia* 1, no. 1 (2025): 51–68.

19 Yeti S Hasan et al., "Trademark Counterfeiting : A Legal Review and Its Implications for Consumer Protection," *Indonesian Civil Law Review (ICLR)* 2, no. 1 (2025): 18–39.

20 andi azizah Hastia, "Dari Klik Ke Kontrak : Pertimbangan Hukum Dalam Perjanjian Jual Beli Online," *Indonesian Civil Law Review (ICLR)* 1, no. 1 (2025): 37–52.

by the balance of rights and obligations. Judges no longer merely examine the existence of consent but also assess the proportionality of contractual content. Through this perspective, Indonesian civil law can move from formal justice toward substantive justice, thereby restoring the contract's function as an instrument of justice in modern society.

II. METHODOLOGY

This research constitutes normative legal research (doctrinal legal research) focusing on the analysis of legal norms concerning the protection of weaker parties in standard form contracts based on the principle of balance in Indonesian civil law[21]. Normative legal research is employed because the primary object of study is not social behavior, but legal rules, legal principles, doctrines, and court decisions governing contractual relations between parties[22]. This approach aims to discover an ideal legal concept (prescriptive analysis) regarding the limits of freedom of contract and the legitimacy of legal intervention against unfair clauses.

The approaches used include the statute approach, conceptual approach, and case approach. The statute approach is carried out by examining Indonesian civil law provisions, particularly those concerning the validity requirements of agreements, good faith, and provisions related to standard clauses. The conceptual approach is used to examine the principle of freedom of contract, the principle of good faith, and the principle of balance as fundamental principles in modern contract law. Meanwhile, the case approach is conducted through the analysis of relevant court decisions in order to understand the application of contractual justice principles in judicial practice[23].

Sources of legal materials consist of primary, secondary, and tertiary legal materials. Primary legal materials include legislation and court decisions. Secondary legal materials consist of legal literature, scientific journals, scholarly

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21 Zainuddin Ali, "Metode Penelitian Hukum" (Jawa Timur: Sinar Grafika, 2010), hlm 99.

22 FCS Adiyanta, "Hukum Dan Studi Penelitian Empiris: Penggunaan Metode Survey Sebagai Instrumen Penelitian Hukum Empiris," *Administrative Law and Governance Journal* 2, no. 4 (2019): 698.

23 Muhammad Ilham Saharuddin, Andi Suriyaman M Pide, Yunus Wahid and Rahmi Sahabuddin Arisaputra, Dzikra Ridha Dwi Aribah, "Tayade System Land Rights : The Concept of Unification of Customary Law and Indonesian Tayade System Land Rights : The Concept of Unification of Customary Law and Indonesian Positive Law," in *The First Forest and Society International Conference 2024 (The 1st FSIC 2024)* (IOP Conf. Series: Earth and Environmental Science 1430 (2024) 012005, 2024), 3, https://doi.org/10.1088/1755-1315/1430/1/012005.

doctrines, and previous research findings. Tertiary legal materials include legal dictionaries and encyclopedias that assist in explaining legal concepts[24].

The technique for collecting legal materials is carried out through library research. The legal materials are then analyzed qualitatively using systematic and teleological interpretation methods to comprehensively determine the meaning of legal norms. The analysis is conducted by assessing the consistency between positive norms and the principles of contractual justice. The results of the analysis are then used to formulate a juridical construction regarding the protection of weaker parties through the application of the principle of balance in standard form contracts, thereby producing legal arguments that are both prescriptive and applicable.

III. THE POSITION OF STANDARD FORM CONTRACTS IN THE INDONESIAN CIVIL LAW SYSTEM

Standard form contracts constitute a legal phenomenon inseparable from the development of modern society. The growth of industry, mass trade, financial services, and the digital economy has encouraged the emergence of transaction models that are fast and efficient. Under such conditions, business actors cannot possibly conduct individual negotiations with each consumer; therefore, agreements prepared in advance in standardized form are used. The other party is merely asked to accept all predetermined terms without modification. Practically, standard contracts become important instruments of economic efficiency, but juridically they raise fundamental questions regarding their position within Indonesian civil law, which is grounded in the principle of freedom of contract.

1. Standard Contracts in the Perspective of Freedom of Contract

Indonesian contract law originates from the continental civil law system that places freedom of contract as its primary principle. This principle is reflected in Article 1338 paragraph (1) of the Indonesian Civil Code, which states that all legally concluded agreements shall bind the parties as law. This provision contains several important meanings: freedom to determine the content of the agreement,

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[24] Saharuddin Dahlan, "The Legal Annalysis of Married Dispensation in The Perspective of Law Number 35 of 2014 Concerning Childhood Protection," *Jurnal Hukum Volkgeist* 5, no. 2 (2021): 186, https://core.ac.uk/download/pdf/327176569.pdf.

freedom to choose contractual partners, and freedom to determine the form of the contract.

Within the classical framework, freedom of contract is based on the theory of individualism and laissez-faire. The state does not interfere in private relations because every individual is assumed to possess rationality and equal standing. A contract is understood as the meeting of the parties' free wills. Thus, as long as the validity requirements under Article 1320 of the Civil Code are fulfilled, the agreement must be respected[25].

Formally, standard contracts do not contradict this principle. Consent is still given by the accepting party, either through signature or electronic click agreement. Therefore, juridically standard contracts fall within the category of valid agreements. However, problems arise concerning the quality of consent. Consent in standard contracts arises not from negotiation but from necessity. The weaker party does not truly possess freedom to determine the contract's content. In other words, freedom of contract turns into illusory freedom[26].

This situation generates criticism of classical contract theory. Formal freedom does not always reflect justice. If the law relies solely on formal consent, it effectively protects economic domination. Therefore, the idea developed that freedom of contract must be limited by other principles, namely good faith and balance.

2. The Theory of Balance as a Correction to Freedom of Contract

The theory of balance emerged as a response to inequality in contractual relations within industrial society. Contracts are no longer viewed merely as exchanges of will, but as fair distributions of rights and obligations. From this perspective, consent is not the sole measure of contractual validity; proportionality becomes more important.

This theory is influenced by developments in modern contract law in various countries emphasizing fairness over freedom. Contracts must reflect substantive justice, not merely formal agreement. Therefore, when one party

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25 Paramita Ersan and Anna Erliyana, "Kualifikasi Hukum Pidana Khusus Terhadap Tindak Pidana Pemilu/Pilkada (Tinjauan Hukum Administrasi Negara)," *Palar | Pakuan Law Review* 4, no. 1 (2018): 1–23, https://doi.org/10.33751/palar.v4i1.781.

26 Grisella Avelyn and Michelle Clementina Bianca, "Analisis Aspek Hukum Perjanjian Sewa Menyewa Dalam Konteks Hukum Perdata Indonesia," *INNOVATIVE: Journal Of Social Science Research* 4, no. 6 (2024): 2447–60.

possesses dominant power and drafts clauses detrimental to the other, the law may intervene.

In the Indonesian legal context, the theory of balance aligns with Article 1338 paragraph (3) of the Civil Code, which states that agreements must be performed in good faith. Good faith is not interpreted merely as honesty, but also propriety and fairness. This means the content of a contract must not create excessive inequality. Thus, freedom of contract does not stand alone but must be interpreted together with good faith and propriety.

Standard contracts become the primary testing ground of balance theory. If all clauses are determined unilaterally and burden consumers, the contract loses its reciprocal character. In such circumstances, judges are authorized to assess the fairness of contractual content.

3. Legal Basis for Recognition and Limitation of Standard Contracts

Normatively, no provision in the Civil Code prohibits standard contracts. This means they are recognized as a form of agreement. However, such recognition is not absolute. Several legal provisions limit their binding force.

First, Article 1321 of the Civil Code states that consent is invalid if given due to mistake, coercion, or fraud. In modern doctrine, economic dependence may be viewed as abuse of circumstances. Although not explicitly regulated, this concept is accepted in judicial practice as a ground for contract annulment. Second, Article 1337 of the Civil Code provides that a cause is unlawful if contrary to law, morality, or public order. Clauses that excessively release business actors from liability may be deemed contrary to propriety and therefore void.

Third, Article 1339 of the Civil Code states that agreements bind not only what is expressly stipulated but also everything required by propriety, custom, and law. This provision allows judges to incorporate elements of justice into standard contracts.

Fourth, Indonesian positive law through consumer protection legislation provides more specific limitations. The law prohibits clauses that transfer liability, grant unilateral modification rights, or restrict consumers' right to claim remedies. This demonstrates national law's recognition of structural imbalance in standard contracts.

Thus, the legal basis of standard contracts is dual in nature: their existence is recognized, but their substance is limited.

4. The Position of Standard Contracts: Valid but Not Absolute

Based on these theories and regulations, the position of standard contracts in Indonesian civil law can be understood as formally valid agreements with relatively limited binding force. This means the existence of the contract is not annulled, but certain clauses may be declared inapplicable.

This approach differs from classical views that assess contracts as a whole. Modern law separates the form and the content of the contract. The form remains valid because consent exists, but the content may be corrected for justice. This principle is known as judicial control of contract.

Judicial correction is conducted by examining whether clauses create significant imbalance. If proven, such clauses do not bind the weaker party. Thus, the law safeguards two interests simultaneously: legal certainty through recognition of the contract and justice through limitation of clauses.

5. The Role of Judges in Assessing Balance

Judges play a central role in determining the position of standard contracts. In the modern paradigm, judges are not merely the mouthpiece of the law but guardians of contractual justice. Through systematic interpretation of Articles 1338, 1339, and the principle of good faith, judges may correct contractual content.

The assessment of balance considers:

1. Proportionality of rights and obligations,
2. Transparency of clauses,
3. The parties' ability to understand the contract,
4. The existence of abuse of dominant position.

If serious imbalance is found, the clause may be disregarded without invalidating the entire contract. This approach preserves transactional stability while protecting weaker parties.

6. Transformation of Contract Law Paradigm

The position of standard contracts reflects the transformation of contract law from a classical model to a social model. In the classical model, contracts are oriented toward individual freedom. In the social model, contracts are oriented toward relational justice. This change is influenced by modern society characterized by economic and informational inequality.

Indonesian civil law is moving toward a balance between legal certainty and justice. Contracts are no longer viewed as purely private will but as social institutions that must reflect propriety. Therefore, freedom of contract is not abolished but reinterpreted through the principle of balance.

IV. FORMS OF IMBALANCE OF CLAUSES IN STANDARD FORM CONTRACTS

Standard form contracts are legal instruments arising from the need for efficiency in modern transactions. The standardization of agreements enables business actors to serve large numbers of consumers at low cost and within a short time. Therefore, their existence cannot be separated from the development of industrial and digital economies. However, from the perspective of civil law, the issue does not lie in the form of the contract but in the content of the clauses, which often place the parties in unequal positions[27]. This imbalance stems from differences in economic power, access to information, and negotiation capacity between business actors and consumers. The party drafting the contract has full control over its content, while the other party can only accept or reject it.

In classical contract law theory, consent is considered the primary indicator of justice. As long as a party signs the agreement, it is deemed to have agreed to all provisions. Nevertheless, developments in modern society demonstrate that formal consent does not always reflect free will. Consumers often lack a real choice due to economic necessity, dependence on services, or limited information. Therefore, modern contract theory introduces the concept of inequality of bargaining power. Contracts are no longer evaluated solely based on agreement but on the proportionality of the distribution of rights and obligations. Here, the principle of balance functions as a corrective to freedom of contract[28].

The imbalance of clauses in standard contracts generally first appears in exoneration clauses. These clauses limit or eliminate the liability of business actors for losses suffered by consumers. In practice, such clauses may state that the business actor is not responsible for loss, damage, delay, system disruption, or service errors. From the perspective of contractual risk theory, contracts

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27 Bartoletti et al., "Dissecting Ponzi Schemes on Ethereum: Identification, Analysis, and Impact."

28 Surya Muhammad Gunarsa, "Kontrak Berjangka Komoditas Emas Sebagai Instrumen Transaksi Derivatif Dalam Kajian Hukum Ekonomi Syariah," *Undang: Jurnal Hukum* 2, no. 1 (2019): 95–117, https://doi.org/10.22437/ujh.2.1.95-117.

should distribute risk proportionally according to each party's role. However, exoneration clauses shift all risk to the weaker party. Consequently, the contract loses its reciprocal character because one party gains economic benefit without bearing comparable responsibility[29].

From the standpoint of Indonesian civil law, such clauses contradict the principle of good faith as reflected in Article 1338 paragraph (3) of the Civil Code, which requires agreements to be performed in good faith. Good faith relates not only to subjective honesty but also to objective fairness. Clauses that remove liability disproportionately may be considered improper and therefore non-binding. Furthermore, Article 1339 of the Civil Code states that agreements bind not only what is expressly stipulated but also what propriety requires. This means that even if a written clause releases liability, the obligation of fairness remains attached. In the context of consumer protection, the prohibition of clauses transferring business liability confirms that the elimination of responsibility constitutes an unjustifiable imbalance[30].

The second form of imbalance is unilateral modification clauses. Many contracts grant business actors authority to change tariffs, interest rates, administrative fees, or service conditions without renewed consent. Such clauses create legal uncertainty because the content of the contract becomes unstable. Yet the fundamental principle of agreements is *pacta sunt servanda*, meaning the contract binds the parties as agreed. If one party can alter the contract unilaterally, agreement loses its meaning as the basis of obligation. In contractual justice theory, contractual stability is a primary requirement of fairness. Unilateral modification establishes a subordinate relationship because only one party determines rights and obligations[31].

From a regulatory perspective, unilateral modification clauses contradict the principles of balance and legal certainty. Contract law requires that modifications be based on mutual consent. Therefore, such clauses are valid only insofar as they do not cause unreasonable harm. If the modification burdens the weaker party, the clause may be deemed non-binding for violating propriety.

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29 Nurbaiti, "Indonesia Passenger's Right Compensation for Transport Accidents: Is It Fulfilling a Sense of Justice?"

30 Imron Rosyadi, Fauzul Hanif Noor Athief, and Darlin Rizki, "Islamic Solution on the Agricultural Land Leasing Problem: Case of Excessive Time Dispute," *Jurnal Ilmiah Al-Syir'ah* 20, no. 2 (2022): 141, https://doi.org/10.30984/jis.v20i2.1679.

31 Desi Syamsiah et al., "Dasar Penerapan Asas Pacta Sunt Servanda Dalamperjanjian," *Jurnal Hukum Das Sollen* 9, no. 2 (2023): 841.

Another imbalance is the limitation of legal remedies. Some contracts prohibit consumers from filing lawsuits, restrict dispute resolution forums to inaccessible locations, or impose extremely short complaint deadlines. Such clauses reduce access to justice. In legal protection theory, the right to bring a claim is part of a fundamental contractual right. Removing that right eliminates the corrective mechanism against breach of contract. Therefore, disproportionate limitations are regarded as an abuse of dominant position.

Indonesian law treats access to justice as a fundamental principle. Agreements must not eliminate the possibility of enforcing rights. Clauses prohibiting lawsuits or absolutely limiting liability contradict the principles of propriety and legal protection. Judges may disregard such clauses to preserve contractual balance.

Another form is the transfer of liability to third parties. In modern service practice, business actors often declare they are not responsible for errors committed by partners or electronic systems. Yet consumers interact directly with the service provider. In contractual liability theory, the party benefiting economically must bear the risks of its business activities, including errors within its operational sphere. Total transfer of liability leaves consumers without a responsible party, creating structural imbalance because risk rests entirely on the weaker party.

Imbalance also appears through complex contractual language. Many standard contracts are drafted using technical terms and long sentences difficult to understand. Formally, the party is considered to know the contract's contents, but in reality it does not. In the theory of contractual transparency, understanding is a requirement of valid intention. Without understanding, consent loses substance. Therefore, contracts must be written clearly and comprehensibly. Lack of clarity may be considered a violation of good faith because it conceals legal consequences from the weaker party.

Imbalance further arises in additional clauses unrelated to the contract's object, such as obligations to purchase additional services or granting broad authority to business actors. Such clauses expand consumer obligations without providing equivalent benefit. In the theory of contractual causa, obligations must relate to the contract's purpose; otherwise, they lack a basis in propriety.

From all these forms emerges a general pattern of imbalance: one-sided risk distribution. Standard contracts often maximize the protection of business actors while minimizing their responsibility. Consumers bear operational risks, policy changes, and even system failures. The principle of balance demands the opposite: every benefit must be accompanied by proportional responsibility.

The role of judges becomes crucial in assessing imbalance. Judges do not merely verify the existence of consent but evaluate the fairness of contractual content. Through systematic interpretation of Civil Code provisions concerning good faith and propriety, judges may declare certain clauses non-binding without invalidating the entire contract. This approach preserves transactional stability while protecting weaker parties.

Thus, imbalance in standard contract clauses constitutes a substantive rather than formal issue. Consent alone is insufficient to legitimize every contractual provision. Modern civil law moves from a consent-oriented approach toward fairness. Contracts remain recognized as economic necessities but are subject to the principle of balance. Through this approach, the law ensures not only certainty in transactions but also a fair distribution of justice in private relations.

In conclusion, clauses limiting liability, granting unilateral authority, restricting legal remedies, transferring risk, or concealing information are indicators of contractual imbalance. The principle of balance functions as a corrective tool to evaluate contractual fairness. Through its application, standard contracts cease to be instruments of economic domination and instead remain within the framework of civil law justice.

V. APPLICATION OF THE PRINCIPLE OF BALANCE IN THE RESOLUTION OF STANDARD FORM CONTRACT DISPUTES

The primary issue in standard form contracts does not end with the existence of unfair clauses but lies in how the law provides solutions when such imbalance has caused actual harm to the weaker party. In modern contractual practice, most disadvantaged parties cannot easily cancel the entire agreement because the contract relates to essential needs, continuous services, or economic relationships that cannot be unilaterally terminated. Therefore, the resolution of standard contract disputes cannot rely solely on a valid-or-void approach but requires a

corrective approach based on the principle of balance. This approach is founded on the idea that the contract should be maintained as far as possible while eliminating its injustice.

The principle of balance views a contract as a dynamic legal relationship rather than merely a static document that binds absolutely. Within this framework, judges no longer merely examine whether the validity requirements of an agreement are fulfilled but assess whether the performance of the contract remains within reasonable limits. A formally valid agreement may become unjust in its execution if there is an abuse of dominant position. Thus, dispute resolution aims to restore equilibrium in the legal relationship rather than simply terminate it.

The initial step in resolving disputes over standard contracts is corrective contract interpretation. Judges must interpret contractual provisions not only according to their literal meaning but also according to purpose and propriety. In standard contracts, clauses are often drafted broadly and generally, allowing interpretations that disadvantage the weaker party. Through interpretation based on good faith, the meaning of the clause is directed to prevent injustice. This method is important because many contractual imbalances arise from the application of clauses rather than their wording. Interpretation therefore becomes the first instrument of legal protection without drastically altering the contract structure.

Modern contract law recognizes the principle that contracts must be interpreted against the drafter in cases of ambiguity. This is particularly relevant in standard contracts because one party controls the drafting entirely. If uncertainty exists, the non-drafting party should not bear the risk of interpretation. This approach reflects balance because responsibility for ambiguity is placed upon the party possessing drafting power.

If imbalance cannot be resolved through interpretation alone, the next step is the exclusion of specific clauses. In many disputes, the problem lies not in the entire agreement but in clauses limiting liability, unilaterally altering obligations, or eliminating the weaker party's rights. The principle of balance allows judges to declare such clauses non-binding without invalidating the entire contract. This approach is crucial because standard contracts often involve services that must

continue, such as banking, utilities, or digital platforms. Total annulment could harm both parties and disrupt legal certainty.

The exclusion of clauses constitutes a substantive correction of contractual injustice. The contract remains recognized as the basis of the legal relationship, but unfair parts are removed. Thus, the law preserves transactional stability while protecting the weaker party. This differs from classical annulment concepts that treat contracts as indivisible wholes. In the modern paradigm, contracts are viewed as a set of norms that may be adjusted for fairness.

The next stage is adjustment of the parties' obligations. In some situations, removing a clause is insufficient to restore balance because the contractual relationship has already produced real losses. Judges may therefore re-determine the proportion of responsibility based on justice. For instance, if a contract releases a business actor from all liability for service damage, the judge may determine liability remains insofar as the loss relates to the business activity. This restores the function of the contract as a reasonable mechanism for risk distribution.

Adjustment of obligations reflects the restorative function of contract law. The goal of dispute resolution is not merely to identify fault but to restore fairness in the legal relationship. In long-term relationships, restoring balance is more important than termination. Therefore, the principle of balance encourages solutions that preserve the contract subject to correction.

Beyond litigation, disputes over standard contracts may also be resolved through non-litigation mechanisms. Mediation and renegotiation are effective means to restore proportionality in relationships. In this process, parties are positioned not as adversaries but as partners adjusting their legal relationship to continue functioning. This approach aligns with the cooperative nature of contracts as economic arrangements. The principle of balance requires that resolution produce not only a decision but also relational continuity.

Renegotiation is particularly important in long-term contracts. Changes in economic conditions, technology, or regulation may create new imbalances unforeseen at the time of formation. In such circumstances, rigid enforcement of the literal contract contradicts justice. The principle of balance permits contractual modification through new proportional agreement, making the law adaptive rather than rigid.

Normatively, the application of the principle of balance is rooted in the obligation of good faith in contract performance. Good faith applies not only during formation but throughout the legal relationship. Each party must reasonably consider the other's interests. When a clause is used excessively to pressure the weaker party, such conduct violates good faith and may be corrected.

This balance-based dispute resolution demonstrates a transformation in the role of judges in contract law. Judges are no longer merely guarantors of formal certainty but guardians of substantive justice. This does not eliminate freedom of contract but ensures it does not become a tool of domination. In other words, judges function as mediators between certainty and fairness.

The application of the principle of balance produces three forms of legal protection:

a. Interpretative protection
   contract interpretation protecting the weaker party
b. Corrective protection
   removal of unfair clauses
c. Restorative protection
   adjustment of obligations to restore legal relations.

These mechanisms complement one another and form a comprehensive protection system.

This approach also reflects a paradigm shift in contract law. In the classical model, disputes were resolved by determining validity or invalidity. In the modern model, resolution seeks to repair the contract. The aim is not merely conflict settlement but preservation of the contract's economic function while protecting justice. Contracts are viewed as social relationships to be maintained, not merely legal documents.

Thus, the principle of balance provides a more flexible and humane dispute resolution framework. Law is not applied mechanically but adjusted to relational context. The weaker party is protected not only through formal prohibitions but through concrete corrective mechanisms, while business actors retain legal certainty because the contract is not automatically annulled.

Ultimately, resolving standard contract disputes based on the principle of balance positions law as a harmonizing instrument of interests. Contracts remain respected as expressions of freedom, but that freedom is limited by justice.

Through interpretation, exclusion of clauses, and adjustment of obligations, the law transforms standard contracts from potential instruments of domination into balanced means of cooperation.

Accordingly, dispute resolution in standard contracts aims not to eliminate the contract but to restore proportionality in the legal relationship. The principle of balance enables civil law not only to preserve certainty but also to deliver substantive justice to weaker parties in modern contractual relations.

VI. CONCLUSION

Based on the discussion regarding legal protection for weaker parties in standard form contracts, it can be concluded that standard contracts constitute valid agreements within the Indonesian civil law system because they arise from the need for efficiency in modern transactions and formally fulfill the element of consent. However, such consent does not always reflect genuine free will due to the inequality of bargaining power between business actors and weaker parties. Therefore, the principle of freedom of contract cannot be understood absolutely but must be interpreted together with the principle of good faith and the principle of balance. Imbalance in standard contracts is generally reflected through exoneration clauses, unilateral modification, limitation of legal remedies, transfer of liability, and complex drafting that obscures the weaker party's understanding. These clauses place risk disproportionately on one party so that the contract loses its reciprocal character. From the perspective of modern civil law, such conditions contradict propriety and contractual justice; therefore, contractual content must be assessed not only based on formal consent but also on the balance of rights and obligations.

The resolution of disputes concerning standard contracts is not carried out merely through annulment of the agreement but through a corrective approach based on the principle of balance. Judges may interpret the contract in a manner that protects the weaker party, set aside unfair clauses, and adjust the obligations of the parties to restore proportionality in the legal relationship. This approach preserves transactional certainty while delivering substantive justice. Accordingly, the principle of balance functions as an instrument of harmonization between freedom of contract and protection of weaker parties. Indonesian civil law is moving from a consent-based contractual paradigm toward a justice-based one,

in which contracts serve not only as instruments of legal certainty but also as mechanisms for fair risk distribution in modern private relations.

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